IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.526 of 2007

Decided on: ***August 09, 2007.***

Nipun Jain ***…Petitioner.***

VERSUS

State of Himachal Pradesh ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Petitioner: **Mr.Vijay Verma, Advocate.**

For the respondent: **Mr.Ashok Chaudhary, Addl.A.G.**

Kuldip Singh, Judge (Oral)

This is an application for releasing the petitioner on bail filed under Section 438 Cr.P.C. in F.I.R. No.79/07 registered at Police Station, Jawalamukhi, District Kangra on 24.5.2007 under Sections 323, 324, 341, 392, 506, 149 and 120-B I.P.C.

2. The facts, in brief, are that complainant Suman Kumar Sharma on 26.4.2007 had gone to attend a marriage along with his family near Nadaun, District Hamirpur and after staying for some time he dropped his family in the function and proceeded to Jawalamukhi temple, Tehsil Dehra, District Kangra, H.P. At about 1.30 P.M. on that date after visiting the temple when he approached his vehicle for returning to home five persons, namely, Nipun Jain, Gurpreet Singh, John, Gian Chand and Cheeku forcibly took possession of his Innova Car bearing HP 21A-2321 by putting the complainant in fear of instant

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Whether the reporters of the local papers may be allowed to see the judgment? Yes

death. They snatched the keys of the vehicle and directed him to accompany them to Police Station but Nipun Jain and Gurpreet Singh instead of taking the vehicle to Police took the vehicle to a secluded place on *Jawalamukhi – Khundian – Palampur* road. The vehicle was stopped in a jungle and the complainant was severely beaten, his clothes were torn and was thrown out of the vehicle and he was robbed of his car, cash Rs.40,000/- jewellery, suit case containing clothes, mobile communicator, total amounting to Rs.2,17,000/-. One trouser, one shirt, two ladies suits and three sets of children suits were also lying in the vehicle. The complainant somehow managed to reach the marriage place and made provision of his family to his native village.

3. The complainant reported the matter to the Bank Manager at Mandi but no satisfactory reply was given by him as such complainant on 27.4.2007 reported the matter to Police Station, Hamirpur who advised him to approach Police Station, Jawalamukhi. The complainant accordingly reported the matter at Police Station, Jawalamukhi vide D.D.R. No.6 dated 27.4.2007. The complainant again approached Police Station, Jawalamukhi on 30.4.2007 and 1.5.2007 but no cognizance was taken by the Jawalamukhi Police. In these circumstances, the complainant filed an application under Section 156(3) Cr.P.C. in the Court of Judicial Magistrate 1st Class, Dehra, who, vide order dated 23.5.2007, ordered registration of F.I.R. and accordingly F.I.R. No.79 of 2007 dated 24.5.2007 was registered at Police Station, Jawalamukhi, District Kangra. Further facts are that complainant took loan from ICICI Bank (Home Loan), Chaman

Commercial Complex, Seri Bazar, Mandi for purchasing Innova Car bearing registration No.HP 21A-2321 under Higher Purchase Agreement dated 21.5.2006. The car was financed for Rs.6,10,000/- and Rs.14,500/- was agreed as instalment per month to be completed in 60 monthly instalments of similar amount per month and the bank took 56 post dated cheques from the complainant in order to secure the loan.

4. The petitioner in the bail application has submitted that the loan of Rs.6,10,000/- was given to Suman Kumar Sharma borrower and Chanchal Dev Guarantor under Higher Purchase Agreement and they were liable to repay the loan of Rs.6,10,000/- in 56 equated monthly instalments of Rs.14,500/- each, commencing from 10.6.2006. It was agreed that in case of default in the payment of amount ICICI Bank Ltd. would be entitled to take over the possession of the vehicle and sell the same towards liquidation of its outstanding dues. The complainant committed the default in repayment of the loan. His cheques were bounced repeatedly on eleven different occasions. The notice dated 21.2.2007 was given to the complainant of defaults. The financed amount was recalled by ICICI Bank and complainant was called upon to repay the entire loan amount. The complainant failed to comply with the same. The complainant filed application under Section 156(3) Cr.P.C. on wrong facts. The possession of the vehicle was taken over and prior intimation was also given to Police Station, Jawalamukhi, District Kangra. The Bank and its representatives have committed no offence. As per the Bank policy, the duly appointed agency is

responsible for taking over the assets on behalf of the Bank. The petitioner was not present at the time of handing over of possession to the representative of the Bank. The complainant has concocted a false story. The vehicle has been taken back by the complainant under the *Supurdari* and the bank has filed a revision against the same, nothing is to be recovered from the possession of the petitioner. The petitioner earlier filed anticipatory bail application which was dismissed by learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala on 12.6.2007. On these grounds, the petitioner has prayed for grant of bail under Section 438 Cr.P.C.

5. I have heard the learned counsel for the petitioner, learned Additional Advocate General for the respondent / State and gone through the record.

6. The learned Additional Advocate General has opposed the bail application. He has submitted that the petitioner has not fully co-operated in the investigation during interim bail. There are serious allegations against the petitioner. The car has been recovered but recovery of other items is yet to be made. In case bail is granted under Section 438 Cr.P.C. at this stage then it will not be possible to make recoveries. The petitioner is not disclosing the whereabouts of other accused, except Gurpreet Singh, who are absconding.

7. The learned counsel for the petitioner has relied upon ***ICICI Bank Ltd. Versus Prakash Kaur and Others [(2007) 2 SCC 711].*** He has submitted that bank has taken into possession the Car under Higher Purchase Agreement and dispute, if any, is of civil

nature. In ***ICICI Bank's case (supra),*** the Supreme Court has deprecated the practice of hiring recovery agents, who are musclemen and it needs to be discouraged. It has been observed that bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics.

8. The earlier bail petition was rejected by the learned Additional District Judge, Fast Track Court, Kangra on 12.6.2007. The present bail application under Section 438 Cr.P.C. was filed by the petitioner on 25.7.2007. Thus, there was sufficient time available to the police to make further investigation and make alleged recoveries. I have perused the statements of Tilak Raj, Kapil Kumar recorded by the police. They are the alleged eye witnesses when the car No.HP 21A 2321 was forcibly taken away by five persons from the complainant. In their statements, they have not stated regarding the removal of cash, jewellery etc. by the five persons when they took away the car from the complainant nor the complainant at that time told them that cash, jewellery, brief case, wearing apparels etc. of the complainant have been taken away by those five persons. They are the most material witnesses. As per the case of the complainant, he dropped his family in the marriage and then proceeded towards Jawalamukhi. The police has not recorded the statement of any family member of the complainant to the effect that in fact the complainant was carrying cash, jewellery, brief case, wearing apparels etc, in his car when he left from Nadaun to Jawalamukhi. It

has been submitted by learned Additional Advocate General that the petitioner joined the investigation in pursuance of order dated 2.8.2007 of interim bail granted by this Court.

9. In the facts and circumstances of the case, the petition is allowed subject to the condition that in the event of arrest of the petitioner in case F.I.R. No.79 of 2007 dated 24.5.2007 under Sections 323, 324, 341, 392, 506, 149 and 120-B I.P.C. registered at Police Station, Jawalamukhi, he be released on his furnishing personal bond in the sum of Rs.30,000/- with one surety in the like amount to the satisfaction of Arresting Officer. He shall join the investigation as and when called upon to do so by the Investigating Officer and shall not hamper the investigation and tamper with the prosecution evidence in any manner. The observations made in the order shall not be construed as expression of opinion on the merits of the case.

Copy ***dasti,*** on usual terms.

August 09, 2007 ***(Kuldip Singh), J.***

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